IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1960 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SUBHASHBHAI SURJIBHAI BODAT

Versus

DIST MAGISTRATE

Appearance:

1. Special Civil Application No. 1960 of 2001

MR LM CHHABLANI for Petitioner No. 1

MR KP RAVAL AGP for Respondents No. 1-2

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 06/03/2002

ORAL JUDGEMENT

Rule. Mr. K.P. Raval, learned AGP waives service of Rule on behalf of the respondent authority. By consent, Rule is fixed forthwith. Heard Mr. Chhablani, learned advocate for the petitioner and Mr. Raval, learned AGP for the respondent authority. During the hearing Mr. Chhablani, learned advocate has taken me through the petition and order passed by the learned

District Magistrate as well as communication issued under the signature of Section Officer, Home Department, Sachivalaya, Gandhinagar dated 22.1.2001.

2. As found from the petition that the petitioner is having Arms licence issued by the authority under the Arms Act and before the expiry of the said licence i.e. 31.12.1998, the petitioner had moved the District Magistrate for renewal of his licence. As found from the order passed by the learned Additional District Magistrate dated 11th July, 2000, the authority has considered the report of the police authority to the effect that the petitioner was involved in an offences registered at Bhiloda Police Station being CR. Nos. 95/97 as well as 71/81, for which, the police authority has not recommended the request of the petitioner and accordingly, the Additional District Magistrate has cancelled the licence issued under the Arms Act and the petitioner was directed to surrender his weapon forthwith at the police station. Even in that order, the petitioner was not informed by giving time to challenge the said order before the Appellate Authority. However, as found from the petition, the petitioner had preferred appeal before the Appellate Authority namely before the Secretary, Home Department, Gandhinagar dated 10.1.2001 and also submitted an application for praying for condoning the delay in filing appeal. The petitioner was informed by the Appellate Authority under letter dated 23.1.2001 that the appeal filed by the petitioner challenging the order passed by the learned Additional District Magistrate dated 11th July, 2000 is not filed within the stipulated time and the appeal is filed late by six months and accordingly, the appeal was treated as time barred and the petitioner was informed that his appeal is filed. It is this order under challenge for which, this Court has issued notice, which was made returnable on 17th August, 2001 as per order dated 8th August, 2001. From time to time the matter was adjourned and an affidavit-in-reply is filed by Shri Parmar, Additional District Magistrate, Sabarkantha, Himmatnagar, supporting the order passed by him cancelling the licence. The question, which this Court has to consider whether the Appellate Authority has applied his mind while considering the appeal filed by the petitioner.

3. On going through the order passed by the District Magistrate dated 11th July, 2000, it is clear that before expiry of the licence, the petitioner has already moved the authority for application for renewal of his licence and the District Magistrate has considering the adverse opinion given by the police authority had cancelled the

licence of the petitioner. It is true that at the time when the petitioner was communicated, the licence was expired on 31st December, 1998. However, in the said order, the petitioner was not informed that the petitioner has remedy to challenge the said order by preferring appeal within a particular time limit. Section 18 of the Indian Arms Act provides for filing appeal before the appellate authority and proviso to Section 18 deals with the situation where the appeal is not filed within the period of limitation. The appeal can be filed by filing application for condoning delay, for which, the authority has to consider such application for condoning that delay can be examined on merits while condoning delay. In the present case, as the petitioner was not informed by the lower authority that he has right to file appeal. The petitioner has approached the appellate authority by filing appeal alongwith application for delay on 16.1.2001. Accordingly, as the petitioner has approached by filing appeal beyond the period of limitation, the application for delay is filed. Reading the order under challenge dated 23.1.2001, it clearly indicates that the appellate authority has not decided the application for delay and the petitioner was informed that appeal preferred by him is filed after six months, the same is filed. Accordingly, the appellate authority has without examining the application for delay, has not considered the same and the same is treated as filed as the appeal is presented after six months. Accordingly, this court is of the view that the appellate authority has not examined the application of delay on merits and without hearing, the said decision deserves to be set aside. Accordingly, the order in the form of communication issued by Section Officer, Home Department, Gandhinagar dated 23.1.2001 Annexure - D is set aside. However, the appellate authority is directed to examine the application for delay filed by the petitioner dated 16.1.2001 and decide the same in accordance with law.

4. With this observation, petition is disposed of.
Rule is made absolute with no order as to costs.

(D.K. Trivedi, J.)
pallav